

900 KAR 2:050. Transfer and discharge rights.

RELATES TO: KRS 216.510(2), 216.525, 216.555, 216.557, 216.560, 216B.015(13), 42 U.S.C. 1395, 1396, 42 C.F.R. 483.15, 483.204

STATUTORY AUTHORITY: KRS 216.515(4), 42 C.F.R. 483.204

NECESSITY, FUNCTION, AND CONFORMITY: 42 C.F.R. 483.204 requires that the state shall provide a process for appeals related to involuntary transfer and discharge. This administrative regulation establishes guidelines for this process for long-term care facilities, including long-term care facilities certified in accordance with 42 C.F.R. Part 483. This administrative regulation also establishes the requirements for reasonable notice of involuntary transfer or discharge pursuant to KRS 216.515(4) and appeal rights.

Section 1. Definitions. (1) "Discharge" or "transfer" means:

(a) Relocation of a resident from a long-term care facility to a noninstitutional setting or another health facility as defined by KRS 216B.015(13); or

(b) Any intrafacility relocation of a resident, except between beds within the same distinct Medicare or Medicaid certified or noncertified part of the facility.

(2) "Facility" means a long-term care facility as defined by KRS 216.510(1), except for family care homes licensed pursuant to 902 KAR 20:041.

(3) "Resident" is defined by KRS 216.510(2).

(4) "Transfer or discharge rights" means those rights of notification and appeal guaranteed in KRS 216.515(4) and (26), and as outlined in this administrative regulation.

Section 2. Transfer and Discharge Rights. (1) Transfer and discharge requirements. The facility shall permit each resident to remain in the facility, and shall not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(c) The safety of individuals in the facility is endangered;

(d) The health of individuals in the facility would otherwise be endangered;

(e) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid, or state supplementation) a stay at the facility; or

(f) The facility ceases to operate.

(2) Documentation. Before a facility transfers or discharges a resident under any of the circumstances specified in subsection (1)(a) through (f) of this section, the reasons for the transfer or discharge shall be documented in the resident's clinical record. The documentation shall be made by:

(a) The resident's physician if transfer or discharge is necessary under subsection (1)(a) or (b) of this section; and

(b) A physician if transfer or discharge is necessary under subsection (1)(c) or (d) of this section.

(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:

(a) Notify the resident and the responsible party, responsible family member, or guardian, in writing, of the transfer or discharge and the reasons for the relocation in a language and manner they understand;

(b) Record the reasons in the resident's clinical record; and

(c) Include in the notice the items described in subsection (5) of this section.

(4) Timing of the notice.

(a) Except as specified in paragraph (b) of this subsection, the notice of transfer or discharge required under subsection (3) of this section shall be made by the facility at least thirty (30) days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge if:

1. An immediate transfer or discharge is required by the resident's urgent medical needs, under subsection (1)(a) of this section;

2. The resident's health improves sufficiently to allow a more immediate transfer or discharge, under subsection (1)(b) of this section;

3. The safety of individuals in the facility would be endangered, under subsection (1)(c) of this section;

4. The health of individuals in the facility would be endangered, under subsection (1)(d) of this section; or

5. The resident has not resided in the facility for thirty (30) days.

(5) Contents of the notice. The written notice specified in subsection (3) of this section shall include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) A statement that the resident, responsible party, responsible family member, or guardian has the right to appeal the action to the cabinet;

(e) The name, address (mailing and email), and telephone number of the cabinet office responsible for receiving requests for appeal;

(f) Information on how to obtain assistance with submitting a request for appeal;

(g) The name, address (mailing and email), and telephone number of the state long-term care ombudsman; and

(h) For a nursing facility resident with a developmental disability or mental illness, the mailing and email address and telephone number of Kentucky Protection and Advocacy.

(6) Orientation for transfer or discharge. A facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) Notice of bed-hold policy and readmission.

(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident, responsible party, responsible family member, or legal guardian that specifies the following:

1. The duration of the bed-hold policy, which shall be requested if available under the Medicaid state plan and provider agreement, during which a resident who receives Medicaid or has a pending application for Medicaid benefits is permitted to return and resume residence in the facility;

2. The facility's policies regarding bed-hold periods, which shall be consistent with paragraph (c) of this subsection, permitting a resident to return; and

3. For a resident who does not receive or does not have an application pending for Medicaid, the facility's established policy governing readmission.

(b) Notice upon transfer. Upon transfer of a resident to a hospital or for therapeutic leave, a long-term care facility shall provide written notice to the resident, responsible party, responsible family member, or legal guardian. The notice shall specify the duration of the bed-hold policy described in paragraph (a) of this subsection.

(c) Permitting resident to return to facility. A long-term care facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the

bed-hold period under the Medicaid state plan, is notified and readmitted to the facility immediately upon the first availability of a bed in a semiprivate room if the resident:

1. Chooses to be readmitted;
 2. Requires the services provided by the facility; and
 3. Is eligible for Medicaid nursing facility services and the facility is certified to participate in Title XVIII, 42 U.S.C. 1395, or Title XIX, 42 U.S.C. 1396, of the Social Security Act.
- (8) Equal access to quality care. A facility shall establish and maintain identical policies and practices regarding transfer, discharge, and the provision of service under the Medicaid state plan for all individuals regardless of source of payment.

Section 3. Appeal Rights. (1) A resident, responsible party, responsible family member, or guardian may appeal any discharge.

(2) A resident, responsible party, responsible family member, or guardian may appeal a transfer if the resident is transferred from:

- (a) A certified bed into a noncertified bed; or
- (b) A bed in a certified entity to a bed in an entity that is certified as a different provider.

(3) A resident, responsible party, responsible family member, or guardian has no appeal rights if the resident is moved from a certified bed into another certified bed of the same certification in the same facility.

(4) A resident, responsible party, responsible family member, or guardian may request that the cabinet review any proposed transfer or discharge. The cabinet shall investigate the proposed transfer or discharge to ascertain whether there has been a violation of the resident's transfer or discharge rights.

(5)(a) A resident, responsible party, responsible family member, or guardian may appeal any discharge or appealable transfer to the cabinet.

(b) The resident, responsible party, responsible family member, or guardian shall inform the cabinet in writing of his or her intent to appeal within fifteen (15) days from receipt of notice of the facility's intent to transfer or discharge and include:

1. A copy of the notice of the facility's intent to transfer or discharge the resident; and
2. If not included on the notice, the name and address of the facility.

(c) Hearing procedures for appeals shall be followed, as established in 900 KAR 2:060.

(6) Penalties. The cabinet shall enforce the provision of this administrative regulation pursuant to KRS 216.555, 216.557, and 216.560. (18 Ky.R. 1729; Am. 2343; 2823; eff. 3-7-1992; TAm eff. 10-10-2010; 41 Ky.R. 2133; 2551; eff. 6-17-2015; 146 Ky.R. 1695, 2280; eff. 2-27-2020.)